IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's Order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

Criminal Appeal No. 273 of 2001

Balbinder Singh & others

Vs

State

Date of decision :-03/4/06

~~A.F.R. (Approved for Reporting)~~

~~Not approved for reporting~~

Date :-03/04/2006 Initials of Judge

Note :- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL AT NAINITAL

CRIMINAL APPEAL NO. 273 OF 2001
{Old No. 110 of 1993}

1. Balbinder Singh
   S/o Surendra Singh
2. Devendra Singh
   S/o Surender Singh
3. Gurdeep Singh S/o Jagat Singh
   R/o Partappur No. 8
   P.S. Nanakmatta
   District Nainital ….Appellants

Versus

State of Uttaranchal …..Respondent

Date :- 03rd April, 2006

Ms. Mamta Bisht learned Amicus Curiae for the appellants and Sri S.C. Bhatt learned counsel for the appellant No.3.
Sri A. Rab learned Addl. G.A. assisted by Sri M. A. Khan learned Brief Holder.

Hon'ble J.C.S. Rawat, J.

1) This criminal appeal has been filed against the judgment and order dated 04.01.1993 passed by Sri A.K. Srivastava, the then IIIrd Addl. Sessions Judge, Nainital (Camp at Haldwani) in S.T. No. 180/1988, whereby the appellants were convicted and sentenced to undergo R.I. for a period of two years and to pay a fine of Rs.1000/- each under section 325/34 IPC. The appellants were also convicted and sentenced to undergo R.I. for one year under section 323/34 IPC read with section 34 IPC. The appellant–Balbinder Singh was further convicted and sentenced to undergo R.I. for one year under section 324 IPC. All the appellants were acquitted from the charge under section 307 IPC read with 34 IPC. In default of payment of fine, the appellants would further undergo R.I. for a period of six months. All the sentences would run concurrently.

2) The prosecution case in a nutshell is that on 31.7.1987 Chinder Singh alongwith truck driver Beant Singh and Kulwant Singh was going to their houses. When they were on the way to their houses, the accused persons surrounded and beaten them at the instigation of Surendra Singh. Surendra Singh was equipped with Kulhari, Balbinder Singh had a Ballam and Devendra Singh and Gurdeep Singh had 'lathis' in their hands. All the accused persons attacked Chinder Singh, Beant Singh and Kulwant Singh and inflicted injuries upon their bodies. In the meantime, Beant Singh taking benefit of the darkness escaped from the spot and informed about the incident to the brother of the injured Chinder Singh. Thereafter, both rushed towards the police station and lodged a written report. It was alleged in the report that when Beant Singh left the spot the accused persons took Kulwant Singh and Chinder Singh to their filed by dragging them and they were also beaten there and they were brought to the house of accused Surendra Singh where they were tied. The said occurrence was also seen by one Kulbinder Singh and Jaswant Singh. The injured were rescued by the police. Thereafter, the injured were sent to he hospital for their medical examination of 01.08.1987. Thereafter, the police investigated the matter and submitted the chargesheet against the accused persons Surendra Singh, Balbinder Singh, Devendra Singh and Gurdeep Singh under section 342,325, 307 & 323 IPC.

3. Charges were framed under section 307 read with section 34 IPC against the accused persons. The accused Surendra Singh died during the trial and the

case was abated against him. The appellants denied the charges and claimed the trial.

4) The prosecution in support of its case examined eight witnesses. Kulwant Singh (PW1), Beant Singh (PW2) and Chinder Singh (PW3) are the injured witnesses. All three injured witnesses have narrated the entire incident as indicated above. Dr. Vijay Singh (PW4) has proved the X-ray reports (Ex.ka.1 & 2). Jagjit Singh (PW5) was the scribe of the report (Ex.ka.3). He had written a report on the information received by Beant Singh. Palbinder Singh (PW6) was an independent witness who had supported the prosecution story and said that he reached at the spot and found that the accused persons beating the injured and dragging them to their house. Karam Singh (PW7) was an independent witness of the incident, but he was declared hostile as he did not support the prosecution story. J.P.Rajbansi (PW8) was the investigating officer of this case. He had proved the statement of witness Karam Singh under section 161 Cr.P.C. He proved the chargesheet (Ex.ka.11), chick FIR (Ex.ka.12) and fard of taking into police possession the clothes of the injured (Ex.ka.13 to 15). The I.O. had also proved the G.D. entry regarding registration of the case as Ex.ka.16. Dr. Birendra Singh, the then Incharge of P.H.C. Nanakmatta had examined the injuries of injured Kulwant Singh, Chinder Singh and Beant Singh on 1.8.1987. The injuries received by Sardar Kulwant Singh were found as follows:-

(i) Stab wound 1.2 cm X .8 cm X 2 cm upper antereo medial of right leg. Fresh bleeding present.

(ii) Oblique contusion redish periphery on right lateral anterior of right leg 14 cm x 2cm.
(iii) Contusion 9 cm x 2 cm oblique on posterior lower part of the right leg.
(iv) Lacerated wound 1 cm x .4 cm x muscle deep upper front of right leg bleeding present.
(v) Abraded contusion 6 cm x 5 cm in front of left knee joint.
(vi) Lacerated wound .1 x .4 cm x muscle deep in front of left leg.
(vii) Contusion 6 cm x 5cm surrounding injury no.5.
(viii) Vertical contusion 17 cm x 3 cm on middle of back of thorax.
(ix) Abraded contusion 11 cm x 2.5 cm left side back of thorax.
(x) Contusion oblique 11 cm 2.5 cm on left side back of trunk (chest).
(xi) Contusion 9 cm 4 cm on lateral of right arm.
(xii) Contusion with abrasion 6 cm x 5 cm on right clavicular region.
(xiii) Contusion with abrasion 6 cm x 6 cm on left side fore head.
(xiv) Contusion 6 cm. x 6 cm on upper lateral left eye.
(xv) Contusion 5 cm x 4 cm on right side of forehead.
(xvi) Contusion 6 cm x 6 cm on middle lower part forehead.
(xvii) Contusion lower lip 4 cm x1.5 cm.
(xviii) Contusion upper lip 4 cm x 2cm.

Injury No. 1 was found to be inflicted y a pointed object and rest injuries were by blunt hard object. Although injury nos. 1, 2, 12, 13, 14 and 15 were kept under observation and X-ray was advised but these injuries were perhaps not X-rayed as there is nothing in the statement of PW4 that he also got them X-rayed, therefore, in absence of X-rays and any other evidence all the injuries as per report in Ex.Ka.4 may be taken to be simple injuries.

The injuries received by Sardar Chinder Singh as mentioned in Ex.Ka-5 are as followes:

1. Incised wound 7 xm x 2 cm x bone deep with suspected fracture of underlying bones 5 cm

above right brow on scalp fresh bleeding, profuse margins clean cut vertical.

2. Contusion lower lip 4 cm x 2 cm.
3. Lacerated wound lower lip middle part .8 cm. x .4 cm. muscle deep upper right medial inciser loosen. Shaky number of teeth 29.
4. Contusion 6 cm x 4 cm posterior and below left ear.
5. Contusion transverse 8 cm x 2 cm on left lower chest in front.
6. Contusion transverse 10 cm x 2.5 cm right lower chest front.
7. Contusion vertical 7 cm x 2 cm on right infrascapula back.
8. Contusion transverse 4 cm x 2 cm right infra scapula back.
9. Contusion oblique 8 cm x 2.5 cm front left leg.
10. Contusion 6 cm x 4 cm upper front right leg.
11. Contusion and abrasion 3 cm x 7 cm right clancular region.
12. Contusion 8 cm x 6 cm in front upper part of the chest.
13. At the time of the examination of the injuries the injured was reacting to the light but was feeling a fainting attack on walking. All the injuries were fresh. Injury No. 1 was caused by sharp edged object while rest injuries were by blunt hard object. Injury nos. 1,2,3 and 6 were kept under observation and X-ray was advised. Injury No. 1 was found to be grievous as per supplementary report (Ex.Ka.8) whereas injury nos. 2,3 and 6 were simple.

Beant Singh had 17 injuries on his body as follows:

(i) Abraded contusion 9 cm x 8 cm in front of left shoulder joint.

(ii) Abraded contusion 14 cm x 11 cm lateral part of left shoulder joint.

(iii) Abraded contusion 11 cm x 7 cm posterior and upper part of the left shoulder joint.

(iv) Contusion oblique on lateral left arm 9 cm x 2 cm redish at peripher.

(v) Contusion 15 cm x 3 cm vertical left scapula infra scapula region on back.

(vi) Abraded contusion 9 cm x 6 cm left infra scapula region back.

(vii) Contusion 7 cm x 3 cm right scapular region.

(viii) Contusion 16 cm x 2.5 cm vertical on middle lower trunk back.
(ix) Abraded contusion 16 cm. x 5 cm. left lower trunk back vertical.
(x) Abraded contusion 10 cm x 6 cm on left lumber region.
(xi) Leniar transverse 5 cm abrasion on upper front of left fore-arm.
(xii) Oblique abrasion linear 5 cm on lower lateral of left arm.
(xiii) Contusion 4 cm x 1 cm latero posterior of left lower part of the fore arm.
(xiv) Contusion 7 cm x 3 cm right arm middle lateral.
(xv) Abraded contusion 6 cm x 4 cm middle front right neck.
(xvi) Contusion 16 cm x 8 cm middle front right leg.
(xvii) Contusion 5 cm x 2 cm oblique right upper part foot.
(xviii) Contusion 12 cm x 8 cm lateral left leg.

All these injuries were found fresh and caused by blunt hard object except injury no.11 and 12 which were caused by friction with a pointed object. Injury Nos. 1,2, 3, 5 and 6 were kept under observation and later on these injuries Nos. 1,2 and 3 were found to be grievous in nature as appears from Ex.ka.7.

5) These injury reports are on record at Ex.ka.4 to 8. The genuineness of these documents had been admitted by the defence. As such, Dr. Birendra Singh was not produced before the court below.

6) In the statement recorded u/s 313 Cr.P.C. the appellants denied the prosecution case and stated that they have been falsely implicated in this case. It was further stated that the report of the incident had been lodged by Surendra Singh. No defence was adduced in support of the defence version.

7. The learned trial court after appraisal of the evidence on record found the appellants guilty and convicted and sentenced the appellants as mentioned above. It is also pertinent to mention here that the accused Surender Singh died during the trail and the case was abated against him. The trial court had also held that the appellants beat the victims but their intention was not to kill the victims because the injuries inflicted were only to the extent of causing grievous hurt. There was no intention to kill the victims at the time of incident. As such, the appellants were not convicted under section 307 IPC.

8) It is also pertinent to mention here that the appellants were enlarged on bail in this case on 21.1.1993. When the service was effected upon the appellants for hearing of the appeal, they were in jail in another case. They were not represented by any counsel, therefore, the assistance of the Amicus Curiae was provided to them.

9) I have heard the learned Amicus Curiae for the appellants and perused the evidence on record.

10) Learned Amicus Curiae has pointed that the trial court has not considered the injuries inflicted upon the accused-appellants. It was contended that injury reports Ex.kha.1 to 4 were filed before the trial court. It was obligatory on the part of the prosecution to explain the injury sustained by the appellants. The prosecution has failed to explain injuries inflicted upon the appellants. As such, the appellants are entitled to be acquitted on this score. Learned Addl. G.A. refuted the contention. Perusal of the injury reports Ex.kha.1

to 4 reveals that there are certain simple injuries on the person of the appellants. It is well settled position of law that it is not necessary to explain the injuries sustained by the accused in each and every case. Merely because the prosecution has failed to explain the injuries it cannot be said that these accused persons received the injuries. The same cannot be a ground for throwing out the prosecution case especially when same has been supported by eye-witnesses including injured one as well as their evidence is corroborated by the medical evidence. It has been held in **Anil Kumar Vs. State of UP 2005 SCC(Cri) p/178** That non-explanation of injuries by the prosecution will not affect the prosecution where the injuries sustained by the accused are minor and superficial. The Apex Court has also held in **Ramlagan Singh Vs. State of Bihar AIR 1972 SC 2593** The prosecution is not called upon in all cases to explain the injuries received by the accused person. It is for the defence to put questions to the prosecution witnesses regarding the injuries of the accused person. When that is not done, there is no occasion for the prosecution witnesses to explain any injury on the person of an accused. In the case at hand, it has not been proved by any evidence or circumstance that the injuries sustained by the accused persons had been caused during the incident. In such a situation, the prosecution is not to explain such injuries on the person of the appellants. If the injuries are superficial and simple as inflicted upon the appellants, such injuries need not to be explained by the prosecution. In the instant case, the injuries sustained by the appellants are simple in nature and superficial one. There is no evidence on record which shows that any

report was lodged with regard to the said incident. The appellants had not produced the copy of the FIR or any compliant made by them to the police with regard to any incident. The defence could not substantiate this fact that the complainant party inflicted the injuries upon the appellants. A specific question was put to Palbinder Singh (PW6) that whether he saw the injuries on the person of the appellants. On his reply, he denied this fact. Apart this, the defence has taken a specific plea of denial during the statement recorded under section 313 Cr.P.C. They have not stated in the statement recorded under section 313 Cr.P.C. that any incident took place on 31-7-1987 in which the victims were the aggressors. During the cross examination, certain suggestions were put and prosecution witnesses have denied the theory that the appellants came to the house of Surendra Singh to take liquor and when the liquor was not given to them, they beat the appellants by deadly weapons. It is surprising that this theory had not been taken even in the statement recoded under section 313 Cr.P.C. If it was so it would have been the natural conduct of the appellants to lodge a report. They did not do so and in absence of such theory of the defence cannot be relied upon. The medical report only reveals that the injuries were three-four days old and the injuries are superficial. He has not indicated the color of the injuries. Therefore, the argument advanced by the learned Amicus Curiae has no force and the injuries sustained by the appellants seem to be superficial.

11) Learned Amicus Curiae further contended that there are certain defects in the investigation. The I.O. had not taken the blood-stained clothes and blood

stained earth from the spot. The I.O. had not taken the rope by which the victims were tied up. It was further contended that these articles should have been sent for chemical examination. Learned Addl. G.A. refuted the contention. It is well settled position of law that the testimony of the witnesses if found credible and cogent the defect on the part of the Investigating Officer cannot be taken into account. This is a remissness on the part of the Investigating Officer, which does not help the appellants. Even if the investigation is defective, that pales into insignificance when ocular testimony is found credible and cogent. In the case of a defective investigation the court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect. To do so would tantamount to playing into the hands of the investigating officer if the investigation designedly defective. **{See Dhanaj Singh @ Shera and others Vs. State of Punjab 2004 (3) SCC P-654, Chhotu Vs. State of Maharashtra 1997 CRI.L.J. 4394 (SC) and Karnel Singh Vs. State of M.P. 1995 CRL.L.J. 4173}** In view of the forgoing discussion I am of the view that if the Investigating Officer has not taken into possession the blood stained clothes and rope is of no avail to the defence and the contentions of the learned Amicus Curiae for the appellants has no force.

12) Learned Amicus Curiae further contended that PW6 Palbinder Singh is a chance witness in this case and he is also an interested witness. It was further contended that PW6 has admitted that he is related to the victims. As such, he is interested witness in this case. It was further contended that the injured

witnesses are also related to each other. It was further contended that the prosecution should have adduced the evidence of other witnesses of the locality. The other witnesses, whose names had been cited in the FIR, were not produced before the court below. It was further contended that non-examination of these is fatal to the prosecution story and the appellants are entitled to be acquitted on this score. Learned Addl. G.A. refuted the contention. It is not always necessary to multiply the evidence of the incident on the same point. It has to be seen what is the quality of the witnesses. It is the quality of the evidence and not the quantity, which is required. It is the evidence available on record is otherwise satisfactorily in nature and can be said to be trustworthy and increase in the number of witnesses cannot be turned up as the requirement of the case. If the prosecution establishes the guilt of the appellants beyond reasonable doubt, there is no need to produce the other evidence in the case. The witnesses if they are participating in that even their evidence cannot be thrown outrightly on the ground that the other witness has not been produced. If the witnesses are trustworthy then it is not required that there should be a multiplicity of evidence. **{See Komal and others Vs. State of U.P. 2002 SCC (CRi) 1600 and Babu Ram vs. State of U.P., 2002 SCC (Cri 1400}.** In the instant case, the prosecution witnesses have corroborated the evidence on material point and they have also corroborated the testimony on each material point. PW6 was cross-examined at length but nothing could be elicited. The appellants were the assaulting party and they had acted jointly by causing injuries on the person of the injured witnesses i.e. PW1, PW2 & PW3. The appellants cannot dispute the

presence of these three witnesses at the spot because they sustained injuries at the place of incident. The evidence of these three witnesses cannot be disbelieved because they stand on a higher pedestal than the simple eye witness. These three witnesses had sustained the injuries during the incident and their evidence cannot be discarded on the ground of being interested witnesses. PW6 has stated in his evidence that he met with Beant Singh on the way while he was coming from the house of Kulwant Singh and he had further stated that Kulwant Singh informed him about the incident and immediately thereafter he went at the spot. His presence could not be disputed. Nothing could be elicited from his cross examination which could lead to disbelieve his presence. It was pointed out that he stated in his evidence that he saw blood oozing from the wounds of Beant Singh when he met him on the way. The medical report did not reveal so. It is a minor contradiction and sometimes the witness exaggerates the story when he appears in the witness box. The statement did not change the gist of story and as such it did not affect the prosecution version. Learned Amicus Curiae for the appellants could not show any other discrepancies in the testimony of these three witnesses.

13) It has now almost become a fashion that the public is reluctant to appear and depose before the court especially in criminal case because of varied reasons. Criminal cases are kept dragging for years to come and the witnesses are a harassed lot. They are being threatened, intimidated and at the top of all they are subjected to lengthy cross-examination. So, the witnesses avoid to come to the court. Therefore, the

contention advanced by the learned Amicus Curiae is not tenable.

14) Learned Amicus Curiae contended that the X-ray report of the injured-Kulwant Singh had not been produced before the court at the time of trail. As such, the appellants cannot be convicted under section 325/34 IPC. Learned Addl. G.A. refuted the contention. Even if the supplementary report had not been produced before the court, the appellants could be convicted under section 325/34 IPC. It is proved by the evidence that Beant Singh had sustained the grievous injuries. The other victim Chinder Singh had also sustained the grievous injuries on his person. The supplementary report was prepared by Dr. Birendra Singh and it was found that injury no.1 of Sardar Chinder Singh was grievous injury and injury no.2, 3 & 6 were simple. Supplementary reports (Ex.ka.7 & 8) were prepared on the basis of x-rays done by Dr. Vijay Singh pal, Superintendent of U.P.H.C., Kichha, Nainital who has been examined as PW4. PW4 has specifically said that the x-ray was done in his supervision and on his direction and on the basis of X-rays he prepared the reports Ex. ka. 1 & 2. Therefore, it is very much clear that the injured Chinder Singh and Beant Singh sustained the grievous injuries. It has come in the evidence that the appellants – Devendra Singh and Gurdeep Singh had lathis in there hands. In case, the grievous injuries sustained by Kulawant Singh are not proved, it may be treated as simple injuries. But, Chinder Singh and Beant Singh had sustained the grievous injuries and it had been caused with the intention to cause the grievous injury. Appellant Balbinder Singh had been convicted under section 324

IPC. Balbinder Singh had a Ballam in his hand and the said ‘ballam’ comes within the category of a ‘deadly weapon’. As such, the conviction made by the trial court is correct.

15) It was further contended that Dr. Birendra Singh was not produced before the court below. It was further contended that Dr. Birendra Singh had examined the injured at P.H.C. Nankmata and he prepared the injury report. The contention of the learned counsel is of no avail to the defence. The perusal of the injury report clearly reveals that the appellant himself had admitted the injury report thereafter it was exhibited. If it was admitted by the appellant, there was no need to call the Dr. Birendra Singh to prove the injury report.

16) The defence has taken a case of denial and at the stage of suggestion to the prosecution witnesses he had stated that the victims asked for the liquor and when it was refused the victims assaulted the appellants and manipulated the FIR. It is also alleged that the appellants had also received the injury in the said incident, but they were not allowed to dodge the report and they were arrested. But, this theory had not been taken during the statement recorded under section 313 Cr.P.C. Perusal of the statement recorded under section 313 Cr.P.C. reveals that the theory of denial had been taken by the appellants during the trial. Thus, the appellants are taking inconsistent pleas during the trial. The prosecution has established the guilt beyond reasonable doubt against the appellants. The evidence of the prosecution witnesses is credible and cogent. The evidence of the victims is

corroborated by the medical evidence and other circumstances.

17) In view of the foregoing discussion, I find that the learned trial court has rightly convicted and sentenced the appellants and there is no infirmity in the judgment passed by the trial court. Hence, the appeal is dismissed and the conviction and sentence awarded by the Trial court are confirmed.

18) Let the lower court record be sent back to the court concerned.

(J.C.S. RAWAT, J.)

Dated 03.04.2006
LSR